

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-222478

DATE: July 7, 1986

MATTER OF: ICSD Corporation

DIGEST:

1. Award on an initial proposal basis is proper where the solicitation advises offerors of this possibility and the record clearly demonstrates that acceptance of an initial proposal will result in the lowest overall cost to the government, based on full and open competition and prior cost experience.
2. General Accounting Office dismisses a protest concerning an alleged solicitation ambiguity because it was filed after the date for receipt of initial proposals. Protests based on alleged improprieties apparent on the face of a solicitation must be filed before the receipt of initial proposals.
3. Where a procurement has not been set aside for small business, the agency has no legal basis for giving preferential treatment to small business firms in the selection process.
4. Protester fails to meet burden of proof and the General Accounting Office denies protest, where protester merely raises general allegations regarding propriety of proposal evaluation and has not furnished any evidence refuting record which shows that proposals were evaluated in a manner consistent with solicitation "Evaluation Factors for Award" provision.

ICSD Corporation protests the award of a contract to Lear Seigler, Inc., under request for proposals (RFP) No. N60530-85-R-0389, issued by the Naval Weapons Center,

China Lake, California, for a quantity of land-based gyrocompasses, known as north finding modules. The protester primarily protests the fact that the Navy made award on the basis of initial proposals. Additionally, the protester maintains that the solicitation was ambiguous and the evaluation defective. We deny the protest in part and dismiss it in part.

The RFP, issued on September 9, 1985, contemplated a fixed-price contract for the manufacture and testing of 298 north finding modules to serve, among other applications, as a subsystem of the Modular Universal Laser Equipment (MULE) system. The MULE is a portable system that uses a laser beam to determine relative target location and to designate targets for laser-guided weapons. The RFP also requested offers on three first article test units (although this requirement could be waived in certain cases) and the rework of those units.

The evaluation criteria to be utilized were listed in the RFP as follows, in descending order of importance: (1) price, (2) technical factors, and (3) management. Although not announced in the RFP, the Navy assigned respective weights of 50, 40, and 10 percent to these criteria. Proposed prices were weighted by comparing the lowest price, which received the maximum possible (50) points, to the specific offeror's price.

Three firms submitted proposals and all were included in the competitive range; the protester's proposal was considered "marginally acceptable" with a high risk factor. Lear Seigler, Inc., received the highest technical point score, and its proposed price was the lowest. Scores and prices of the three offerors were as follows:

Offeror	Technical and Management Score	Proposed Price	Cost Score	Total Weighted Score
Lear Seigler	37.34	\$5,145,330	50	87.34
Sperry Corp.	35.76	\$6,604,486	38.95	74.71
ICSD,	25.71	\$5,244,800	49.05	74.76

The Navy determined, without holding discussions, that Lear Seigler's offer was most advantageous to the government, price and other factors considered, because of the firm's technically superior proposal and lowest cost.

Further, the agency determined that Lear Seigler's price was fair and reasonable based on adequate price competition. The agency awarded a contract to Lear Seigler on April 7, 1986.

The protester argues that the Navy's failure to conduct discussions and request best and final offers was not in the best interest of the government. It maintains that due to a decrease in its costs that occurred after it had submitted an initial proposal, it could have lowered its price if best and final offers had been requested. Further, it contends that discussions could have clarified deficiencies cited by the Navy in the firm's proposal.

Under the Competition in Contracting Act of 1984, a contracting agency may make an award on the basis of initial proposals where the solicitation advises offerors of that possibility and the existence of full and open competition or accurate prior cost experience clearly demonstrates that acceptance of an initial proposal will result in the lowest overall cost to the government 10 U.S.C.A. §§ 2305(a)(2)(B)(ii); 2305(b)(4)(A)(ii) (West Supp. 1985); Federal Acquisition Regulation (FAR) § 15.610(a)(3) (FAC 84-5, Apr. 1, 1985;) see Cerberonics, Inc., B-220910, Mar. 5, 1986, 86-1 CPD ¶ 221.

The RFP here incorporated by reference the "Contract Award" clause, FAR § 52.215-16, section (c) of which expressly advises offerors that the government may award a contract "on the basis of initial offers received, without discussions," and that offerors thus should include their best terms in their initial proposals. The agency determined that there was adequate price competition, based on the receipt of the three proposals, all of which had been included in the competitive range. Additionally, the agency's analysis of prior cost experience shows that the unit price for the modules awarded to Lear Seigler here was \$17,157, while the unit price under the same firm's current contract for the requirement, awarded on May 3, 1985, was \$21,922. Before that, the unit price under a Sperry Corporation contract awarded on December 20, 1983, was \$52,359.

Although the protester now states, after award, that it could have lowered its prices, there is no indication in the record that the agency had reason to believe that discussions would have resulted in a more advantageous

price, particularly since it states that it could waive the first article requirement for Lear Siegler, but could not have done so for ICSD, since that firm was not a prior producer.^{1/} Accordingly, we find that the agency met the statutory requirement for full and open competition, resulting in an award with the lowest cost to the government.

The protester also contends that the solicitation is ambiguous concerning best and final offers. The protester acknowledges that the previously discussed FAR clause stated that award could be on the basis of initial proposals; however, the protester states it relied on another clause in the RFP, concerning submission of a small business subcontracting plan, which allegedly stated that best and final offers would be received.

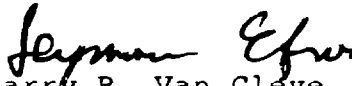
We dismiss this basis of protest as untimely, since our Bid Protest Regulations require that protests based on alleged solicitation deficiencies apparent on the face of a solicitation be filed before the closing date for submission of initial proposals. 4 C.F.R. § 21.2(a)(1) (1986); Tracor Applied Sciences, B-219735, Sept. 26, 1985, 85-2 CPD ¶ 343. However, we note that the clause in question, entitled "Small and Small Disadvantaged Business Subcontracting Plan," does not specifically state that best and final offers will be requested. Instead it states that if an offeror is successful, after the receipt of best and final offers, it may be required to submit a small business subcontracting plan on an expedited basis.

Finally, ICSD complains that the Navy failed (1) to consider its status as a small business concern and (2) to follow the RFP evaluation criteria. Since the solicitation here was not set aside for small business, there was no legal basis for the Navy to give special consideration to this status. Norfolk Ship Systems, Inc., B-219404, Sept. 19, 1985, 85-2 CPD ¶ 309. As for the protester's claim that the agency failed to follow listed evaluation criteria, the record shows that the source selection board

^{1/} ICSD's unit price of \$14,394 was the lowest offered unit price. Its total price for the entire quantity of north finding modules, however, was offset by its highest total offered price for the first article test units, which the Navy waived for Lear Siegler.

provided a narrative for each of the offerors on each of the RFP evaluation factors, and that the contracting officer adopted the selection board's recommendations. The protester does not specify which criteria were not followed or otherwise rebut the Navy's report. Therefore, we consider the protester not to have met its burden of proof on this protest ground. Muschong Metal & Mfg. Co., B-221410, Apr. 4, 1986, 86-1 CPD ¶ 327.

The protest is denied in part and dismissed in part.

for 
Harry R. Van Cleve
General Counsel